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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/124,043	07/29/1998	JOHN S. HENDRICKS	5212	6239

7590 04/09/2003

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EXAMINER

GRANT, CHRISTOPHER C

ART UNIT

PAPER NUMBER

2611

DATE MAILED: 04/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/124,043

Applicant(s)

HENDRICKS ET AL.

Examiner

Christopher Grant

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-136 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-136 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Election/Restriction

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-31, 39-50, 59-65 and 117-136, drawn to apparatus that gathers viewing habits or programs watched data, classified in class 725, subclass 9.
 - II. Claims 32-38, 51-58, 72-108 and 110-116, drawn to program delivery system based on programs watched data or targeted program delivery system, classified in class 725, subclass 114
 - III. Claims 66-71 drawn to a menu driven cable television selection system classified in class 725, subclass 87.
 - IV. Claim 109 drawn to method of determining ratings, classified in class 725, subclass 25.
2. The inventions are distinct, each from the other because of the following reasons:

Inventions I-IV are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention I has separate utility such as gathering viewing habits on a computer network, invention II has separate utility such as program delivery based on programs selected over radio, invention III has separate utility such as menu selection for a teletext system,

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and invention IV has separate utility such as determining content rating for children surfing the WEB. See MPEP § 806.05(d).

3. Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

4. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

5. Applicant's election with traverse of Group 1 in paper No. 8 is acknowledged. The traversal is on the ground(s) that all the claims are related and that a thorough search could be made without serious burden on the Office.

After reviewing the application, the Examiner has determined that some of the claims were not properly categorized in the appropriate grouping. A new restriction requirement is provided above.

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Conclusion

6. Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
Washington, D.C. 20231

or faxed to:

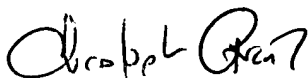
(703) 872-9314 (for formal communications intended for entry and for informal or draft communications, please label "PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chris Grant whose telephone number is (703) 305-4755. The examiner can normally be reached on Monday-Friday from 8:00am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Faile, can be reached on (703) 305-4380.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to customer service whose telephone number is (703) 306 0377.



Christopher Grant
Primary Examiner
April 5, 2003